

REMARKS

Examiner has rejected Claim 32 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, that "it is not clear what Applicant means by 'a stylus pad.'" In response, Applicant has amended Claim 32 to more distinctly describe "a stylus device for entering data on a computer surface," as suggested by Examiner. Applicant respectfully asserts that Claim 32 is now in condition for allowance.

Examiner has rejected Claims 1-4, 8-10, 14, 16, 33-40 under 35 U.S.C. § 102(b) as being anticipated by *Mansfield et al.* (5,819,735). Specifically, with respect to Claims 2-4, 8-10, 14, and 16, Examiner has stated that *Mansfield* ('735) discloses a device for reading a machine-readable indicia "wherein the machine readable indicia is the commonly available Nutritional Facts Data." In response thereto, Applicant has amended Claims 1, 33, 34, 38, and 39, and respectfully traverses Examiner's rejection.

Mansfield ('735) does teach a device that reads a traditional food package bar code; however, Applicant respectfully asserts that *Mansfield* ('735) does not utilize, anticipate, teach or render obvious a device that is capable of reading the "Nutrition Facts Data" table on a product package, nor a specialized bar code containing nutritional information. The "machine-readable indicia" as referenced by Examiner, is the traditional bar code identifier,

wherein ONLY THE IDENTITY OF THE PRODUCT is read. The nutritional information MUST then be cross-referenced from a stored nutritional fact database. "When product barcodes are scanned to be entered for diet monitoring purposes, a search is made for the product record" in the database(s). *Mansfield* ('735), Col. 4, lines 53-55. It is clearly disadvantageous to REQUIRE an on-board database, given the volume of products that would need to be included. *Mansfield* ('735) even recognizes this issue, but attempts to solve the problem by including two databases and removable data cartridges.

Applicant's device overcomes this disadvantage by enabling the DIRECT READING of nutritional data FROM THE PRODUCT PACKAGE ITSELF. Pursuant to 21 U.S.C.S. § 343, food nutrition facts must be printed on the package label. Because this information is already available on the package label, Applicant's device is able to proceed WITHOUT NECESSITATING A DATABASE by scanning and interpreting the printed words. Applicant does prefer to include a database OPTION, but is not limited to such functionality, as *Mansfield* ('735) is.

Further, Applicant describes and envisions a second package barcode, not presently available or anticipated, wherein the nutrition information presently provided in table form on package labeling would be presented in barcode form. Applicant's nutrition barcode would, again, enable direct scanning input of the nutrition information without requiring database searching. There is no provision or description under *Mansfield* ('735) of any possibility of

proceeding without accessing a database of nutritional information.

Applicant has amended Independent Claims 1, 33 and 34 to clarify and more succinctly define that Applicant's machine-readable indicia is not the traditional goods-identifying bar code, but is indicia representing nutritional information that is "printed on a package label," and that by virtue of the machine reading of the indicia, the nutritional information is input into the device. Because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. V. Union Oil co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), and because *Mansfield* ('735) does not describe each and every element of Applicant's device, Applicant believes that Applicant's Independent Claims 1, 33, and 34, as amended, are distinguished over *Mansfield* ('735).

Applicant's device is capable of reading the traditional product identification barcode and then cross-referencing a database of information. However, unlike *Mansfield* ('735), Applicant's device and method can receive such information without access to a database by reading from the product package or label itself, whether via direct reading and interpretation of the alphanumeric representations of the federally mandated Nutritional Facts Data table, or a previously undescribed nutritional information barcode or other type of computer-representation of such facts. Thus, Applicant respectfully asserts that because the identical invention is not

shown, "The identical invention must be shown in as complete detail as is contained in the...claim," *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989), *Mansfield* ('735) does not anticipate Applicant's device.

In view of the foregoing remarks and amendments, Applicant respectfully asserts that Examiner's remaining rejections under 35 U.S.C. § 103 are moot. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981 (CCPA 1974). None of the references offer any possible solution to Applicant's defined problem, that is, the burden of necessitating reliance on an onboard database of nutritional information. Thus, Applicant respectfully asserts that none of the pending claims are obvious.

Applicant believes that the foregoing amendments and arguments distinguish the claims over the prior art and establish that Applicant's claimed invention is novel and non-obvious, thereby placing the rejected independent claims and all remaining depending claims in condition for allowance.

CONCLUSION

The above amendments are corrections to form and thus, no new matter was added. In light of the above amendments and arguments, Applicant respectfully believes that Claims 1-40 are now allowable. Should there be any questions or concerns, the Examiner is invited to telephone Applicant's undersigned attorney.

Respectfully submitted, this 24th day of November, 2004.



Sandra M. Sovinski
Reg. No. 45,781

Myers & Kaplan,
Intellectual Property Law, L.L.C.
1899 Powers Ferry Road
Suite 310
Atlanta, GA
(770) 541-7444
(770) 541-7448 facsimile
ssovinski@mkiplaw.com -- Email
Attorney Docket Number: 2000-1430-RA